

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

DAVID KOERBER,
Plaintiff,

v.

**COLTER RUSHING and O'REILLY
AUTO ENTERPRISES, LLC,**
Defendants.

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CASE NO. 5:21-cv-01016

**INDEX OF MATTERS BEING FILED
AND LIST OF ALL COUNSEL OF RECORD**

Defendant O'Reilly Auto Enterprises, LLC ("Defendant") submits this Index of Matters Being Filed and List of All Counsel of Record. The following items are being filed by Defendant:

1. Index of Matters Being Filed and List of All Counsel of Record;
2. Copies of all executed process, pleadings asserting causes of action and all orders signed by the state judge as follows:
 - A. Plaintiff's Original Petition, filed August 13, 2021 (attached as Exhibit 1-A);
 - B. Service to Defendant on September 20, 2021 (attached as Exhibit 1-B);
 - C. Defendant O'Reilly Auto Enterprises, LLC, Original Answer, filed on October 8, 2021 (attached as Exhibit 1-C);
3. A copy of the state court docket sheet (attached as Exhibit 1-D).

The parties' respective attorneys are as follows:

- A. Attorneys for Plaintiffs:

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RaulR@davislaw.com
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10500 Heritage Blvd., #102
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Attorney for Plaintiffs

B. Attorneys for Defendant:

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Attorney in Charge for Defendant

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Dated: October 20, 2021

EXHIBIT 1-A

2021CI16518

CAUSE NO. _____

DAVID KOERBER,
Plaintiff,

VS.

COLTER RUSHING and O'REILLY
AUTO ENTERPRISES, LLC
Defendants.

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IN THE DISTRICT COURT

Bexar County - 224th District Court

_____**JUDICIAL DISTRICT**

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

COMES NOW, **DAVID KOERBER**, Plaintiff in the above-styled and numbered cause of action, complaining of Defendants, **COLTER RUSHING and O'REILLY AUTO ENTERPRISES, LLC**, in support thereof would show unto this Honorable Court the following:

I.
DISCOVERY CONTROL PLAN

Plaintiff contends that discovery shall be conducted under a Discovery Level 3 pursuant to the TEXAS RULES OF CIVIL PROCEDURE.

II.
PARTIES

Plaintiff **DAVID KOERBER** is a resident of Bexar County, Texas

Defendant **COLTER RUSHING** is an individual that resides in the State of Texas who can be served with process in person, a true copy of the citation and petition at **4032 E SOUTHCROSS, SAN ANTONIO, TEXAS 78222.** Service is requested at this time.

Defendant **O'REILLY AUTO ENTERPRISES, LLC**, is an entity that conducts a for profit business in the State of Texas who can be served with process by delivering to its Registered Agent, **C T CORPORATION SYSTEM, 233 SPRINGFIELD, MO 65802.** The citation for said Defendant can be served through J. Bruce Bugg, Jr, Chairman of the Texas

Transportation Commission located at 125 East 11th Street, Austin, TX 78701. Service is requested at this time.

III.
JURISDICTION and VENUE

Venue of this lawsuit is proper in San Antonio, Bexar County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE, because of 15.001 Section of the Texas Civil Practices and Remedies Code. In addition, all acts complained of herein took place in San Antonio, Bexar County, Texas and more than one Defendant resides in Bexar County, TX.

IV.
FACTS

On or about December 7, 2020, Plaintiff **DAVID KOERBER** was operating a 2003 blue Chevrolet Trailblazer in a lawful manner while traveling southbound on WW White Rd, in San Antonio, Texas. Suddenly and without any warning a 2016 white Nissan Frontier being operated by **COLTER RUSHING** collided onto the Plaintiff's vehicle while the Plaintiff was traveling in his lane. At the time in question, **COLTER RUSHING** was in the course and scope of his employment with **O'REILLY AUTO ENTERPRISES, LLC**, who was the owner of the large white Nissan company truck. The evidence will demonstrate that the Defendant **COLTER RUSHING** was exiting a private driveway and failed to yield the right of way to the Plaintiff causing a violent collision between the two vehicles. The investigating police officer from the San Antonio Police Department attributed all fault to the Defendant, **COLTER RUSHING**. As a result of the collision in question, the Plaintiff **DAVID KOERBER** sustained severe, excruciating, and painful personal injuries to her whole body in general.

V.
CAUSE OF ACTION AGAINST COLTER RUSHING

A. NEGLIGENCE

The collision made the basis of this lawsuit resulted from the improper driving conduct of Defendant. The conduct of Defendant constituted negligence as that term is understood in the court of law, and such negligent conduct was a proximate cause of the occurrence, injuries, and damages to the Plaintiff made the basis of this suit. Defendant owed Plaintiff a duty to use ordinary care in the operation of his vehicle, and breached said duty in one or more of the following non-exclusive particulars:

- a. failing to control the speed in violation of Texas Transportation Code §545.351;
- b. failing to provide a clear distance in violation of Texas Transportation Code §545.062;
- c. failing to apply the brakes properly and/or timely in violation of Texas Transportation Code §547.408(a)(3); and
- d. disregard for the safety of others while operating a vehicle in violation of Texas Transportation Code §545.401;
- e. failing to yield the right of way in violation of Texas Transportation Code §545.151;
- f. failing to control the operation of his vehicle;
- h. failing to avoid the incident in question;
- i. failing to keep a proper look out;
- i. failing to operate his vehicle as a person of ordinary prudence would have.

Each of the above acts or omissions, singularly or in combination with each other, constitutes negligence and negligence per se, which proximately and directly caused the collision in question, as well as Plaintiff's injuries and damages, as set forth more specifically herein.

VI.

CAUSES OF ACTION AGAINST O'REILLY AUTO ENTERPRISES, LLC.

B. NEGLIGENCE

On the occasion in question, Defendant **O'REILLY AUTO ENTERPRISES, LLC** and its agents, servants, and employees were liable to Plaintiff under §101.021(1) of the CIVIL PRACTICE & REMEDIES CODE because Plaintiff's injuries and damages were proximately caused by the wrongful act or omission or the negligence of **COLTER RUSHING**, who was acting within the scope of his employment while operating or using a motor-driven vehicle or motor-

drive equipment and **O'REILLY AUTO ENTERPRISES, LLC** would be personally liable to Plaintiff under Texas Law.

Specifically, the occurrence made the basis of this suit, reflected in the above paragraph 6 and the resulting injuries and damages were proximately caused by the negligent conduct of **COLTER RUSHING**, who was in the course and scope of his employment with Defendant **O'REILLY AUTO ENTERPRISES, LLC** and operated her vehicle in a negligent manner because she violated the duty which he owed Plaintiff to exercise ordinary care in the operation of his motor vehicle in one or more of the following respects:

- a. Failure to exercise control over Defendant, **COLTER RUSHING**, as a reasonable and prudent employer and trucking company would have done under the same or similar circumstances;
- b. Failure to implement and/or enforce adequate policies and procedures for the safe maintenance of commercial motor vehicles;
- c. Failure to implement and/or enforce adequate policies and procedures for the safe operation of commercial motor vehicles/trailers;
- d. Failure to adequately supervise Defendant, **COLTER RUSHING**, in discharge of his duties as an operator of a commercial motor vehicle, including but not limited to, failure to enforce disciplinary policies and procedures;
- e. Failure to adequately train and instruct Defendant, **COLTER RUSHING**, as a driver of a commercial motor vehicle;
- f. Retaining Defendant, **COLTER RUSHING**, as a driver when it knew or should have known that he was incompetent and/or dangerous;
- g. Failing to conduct a thorough and proper investigation into the record, background, and or qualifications of Defendant, **COLTER RUSHING**; and
- h. Hiring Defendant, **COLTER RUSHING**, to be a driver

Each of these acts and/or omissions, whether taken singularly or in any combination, constitutes negligence and negligence per se and gross negligence and proximately caused the collision and injuries and other losses as specifically set forth herein, all of which Plaintiff

suffered and which Plaintiff will continue to suffer in the future, if not for the remainder of her natural life.

C. RESPONDEAT SUPERIOR

Defendant **O'REILLY AUTO ENTERPRISES, LLC** is also liable to Plaintiff for each and every negligent act and/or omission of **COLTER RUSHING** under the doctrine of respondeat superior, and/or the doctrine of borrowed servant, and/or agency as those terms are understood in law in that **COLTER RUSHING** was operating his vehicle in the course and scope of his employment with Defendant **O'REILLY AUTO ENTERPRISES, LLC**.

Each of these acts and/or omissions, whether taken singularly or in any combination proximately caused the collision and injuries and other losses as specifically set forth herein, all of which Plaintiff suffered and which Plaintiff will continue to suffer in the future, if not for the remainder of her natural life.

The above acts and/or omissions were singularly and cumulatively the proximate cause of the occurrence in question and the resulting injuries and damages sustained by Plaintiff.

VII.
DAMAGES

As a result of the incident made the basis of this lawsuit described in the preceding paragraphs and the negligence of Defendants **COLTER RUSHING** and **O'REILLY AUTO ENTERPRISES, LLC**, Plaintiff sustained significantly debilitating injuries and damages in the past and will, in reasonable probability, sustain these damages in the future.

Plaintiff respectfully requests that the trier of fact determine the amount of her damages and losses that she has incurred in the past and will reasonably incur in the future, as well as the monetary value of these damages, which include, but are not limited to:

- a. past and future physical pain and suffering and mental anguish;

- b. past and future disfigurement;
- c. past and future physical impairment;
- d. past and future medical care expenses;
- e. past and future loss of earning capacity, and
- f. past and future out-of-pocket economic losses.

Because of all of the above and foregoing, Plaintiff has suffered actual damages in excess of the minimum jurisdictional limits of the Court for which damages Plaintiff now brings suit.

Plaintiff seeks both prejudgment and post judgment interest as allowed by law, for all costs of court, and all other relief, both in law and in equity, to which she may be entitled.

VIII. **INTEREST**

Plaintiff further requests both pre judgment and post judgment interest on all her damages as allowed by law.

IX. **REQUESTS FOR DISCLOSURE**

Pursuant to Rule 194, request is made that Defendants disclose, within thirty (30) days of service of this request, the information or material described in Texas Rule of Civil Procedure 194.2 (a)-(l). Defendants must serve a written response to this Request for Disclosure on Plaintiff within thirty (30) days after the service of this request. Failure to timely respond shall constitute an abuse of discovery pursuant to Texas Rule of Civil Procedure 215.

X. **JURY DEMAND**

Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Plaintiff respectfully requests and demands a trial by jury. The appropriate jury fee is tendered with the filing of this pleading.

XI.
SERVICE

The following is the undersigned attorney's designation of electronic service email address for all electronically served documents and notices, filed and unfiled, pursuant to Texas Rule of Civil Procedure 21(f)(2) & 21(a). (RaulR@davislaw.com; DianaV@davislaw.com; ThomasO@davislaw.com). This is the undersigned's ONLY electronic service email addresses and service through any other email addresses will be considered invalid.

XII.
RULE 193.7 NOTICE

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff **DAVID KOERBER** hereby gives actual notice to Defendants that any and all documents produced may be used against Defendants producing the document at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

XIII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited in terms of law to appear and answer herein, that upon final trial and hearing hereof, that Plaintiff recovers damages in accordance with the evidence, that Plaintiff recovers costs of court herein expended, that Plaintiff recovers interest to which Plaintiff is justly entitled under the law, and for such other further relief, both general and special, both in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

DAVIS LAW FIRM
10500 Heritage Blvd., #102
San Antonio, Texas 78216

Telephone: (210) 444-4444

Facsimile: (210) 870-1449

By: /s/ Raul A. Rios
RAUL A. RIOS, OF COUNSEL
TEXAS BAR NO. 16935870
RaulR@davislaw.com

ATTORNEYS FOR PLAINTIFF

EXHIBIT 1-B

76 #
P5C11703
PRIVATE PROCESS
9-20-21

Case Number: 2021CI16518

David Koerber VS Colter Rushing ET AL
(Note: Attached Document May Contain Additional
Litigants)IN THE 224TH DISTRICT COURT
BEXAR COUNTY, TEXASCITATION

"THE STATE OF TEXAS"

Directed To: **O'Reilly Auto Enterprises LLC**
BY SERVING ITS REGISTERED AGENT CT CORPORATION SYSTEM

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00am on the Monday next following the expiration of twenty days after you were served this CITATION and PETITION a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org" Said **ORIGINAL PETITION** was filed on this the 13th day of August, 2021.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT on this the 15th day of September, 2021.

RAUL A RIOS
ATTORNEY FOR PLAINTIFF
10500 HERITAGE ST 107
SAN ANTONIO TX 78216-3616**Mary Angie Garcia**
Bexar County District Clerk
101 W. Nueva, Suite 217**San Antonio, Texas 78205**
By: /s/ Ana Cortijo
Ana Cortijo, Deputy

DAVID KOERBER VS COLTER RUSHING ET AL

Case Number: 2021CI16518
224th District Court**Officer's Return**

I received this CITATION on the _____ day of _____, 20____ at _____ o'clock ____ M. and () executed it by delivering a copy of the CITATION with attached ORIGINAL PETITION the date of delivery endorsed on it to the defendant _____ in person on the _____ day of _____, 20____ at _____ o'clock ____ M. at _____ or () not executed because _____

Fees: _____ Badge/PPS #: _____ Date certification expires: _____

County,
Texas

BY:

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO THIS _____

NOTARY PUBLIC, STATE OF TEXAS

OR: My name is _____, my date of birth is _____, and my
address is _____ County.

I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State
of Texas, on the _____ day of _____, A.D., _____.

Declarant

EXHIBIT 1-C

CAUSE NO. 2021CI16518

DAVID KOERBER,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
vs.	§	224th JUDICIAL DISTRICT
	§	
COLTER RUSHING and O'REILLY	§	
AUTO ENTERPRISES, LLC	§	
Defendants.	§	BEXAR COUNTY, TEXAS

DEFENDANTS' ORIGINAL ANSWER AND TRCP 193.7 NOTICE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES COLTER RUSHING AND O'REILLY AUTO ENTERPRISES, LLC, Defendants in the above styled and numbered cause, and files this Original Answer to Plaintiff's Original Petition, and in support thereof respectfully states as follows:

I. GENERAL DENIAL

Reserving the right to file other further pleadings, exceptions and/or denials, Defendants COLTER RUSHING AND O'REILLY AUTO ENTERPRISES, LLC, generally deny each and every material allegation contained in Plaintiff's Original Petition, and demands that Plaintiff be required to prove the same by a preponderance of the credible evidence in accordance with the laws and the Rules of Civil Procedure of the State of Texas.

II. TRCP 193.7 NOTICE

Pursuant to Texas Rules of Civil Procedure 193.7, any and all documents produced by Plaintiff in response to Defendants' written discovery are intended to be used by Defendants and shall be deemed as properly authenticated for use against Plaintiff in any pretrial proceeding or trial of this case.

**III.
PRAYER**

WHEREFORE, Defendants COLTER RUSHING AND O'REILLY AUTO ENTERPRISES, LLC, request judgment of the Court that Plaintiff take nothing by this suit, and that Defendants be awarded costs and such other and further relief to which it may be justly entitled.

Respectfully submitted,

**RAMÓN WORTHINGTON
NICOLAS & CANTU, PLLC**
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/s/ Marc Hanna
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Marc-Anthony P. Hanna
State Bar No. 24099843
mhanna@ramonworthington.com
Electronic Service to:
efile@ramonworthington.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2021, a true and correct copy of the foregoing document was sent via electronic filing to the following:

Raul A. Rios

RaulR@davislaw.com

DAVIS LAW FIRM

10500 Heritage Blvd., #102

San Antonio, TX 78216

ATTORNEYS FOR PLAINTIFF

/s/ Marc Hanna

Marc-Anthony P. Hanna

EXHIBIT 1-D

224th District Court**Case Summary****Case No. 2021CI16518**

David Koerber VS Colter Rushing ET AL § Location
 § **224th District Court**
 § Judicial Officer
 § **224th, District Court**
 § Filed on
 § **08/13/2021**

Case Information

Case Type: **MOTOR VEHICLE
ACCIDENT**

Case Status: **08/13/2021 Pending**

Assignment Information

Current Case Assignment

Case Number 2021CI16518
Court 224th District Court
Date Assigned 08/13/2021
Judicial Officer 224th, District Court

Party Information

Lead Attorneys

Plaintiff Koerber, David

**RIOS, RAUL A
Retained**

Defendant O Reilly Auto Enterprises LLC

**HANNA, MARC-ANTHONY P
Retained**

**HANNA, MARC-ANTHONY P
Retained**

Rushing, Colter

HANNA, MARC-ANTHONY P

Retained**HANNA, MARC-ANTHONY P*****Retained***

Events and Orders of the Court

08/13/2021 New Cases Filed (OCA)

08/13/2021 PETITION

08/13/2021 JURY FEE PAID

09/15/2021 **Citation**
Rushing, Colter
Served: 09/23/2021
O Reilly Auto Enterprises LLC
Served: 09/20/2021

09/15/2021 CIVIL FILING HOLDING NOTES

09/20/2021 RETURN OF SERVICE - UNSUCCESSFUL
O'REILLY AUTO ENTERPRISES, LLC

09/27/2021 RETURN OF SERVICE - SUCCESSFUL
COLTER RUSHING

10/08/2021

ORIGINAL ANSWER OF

COLTER RUSHING AND O REILLY AUTO ENTERPRISES, LLC, and TRCP 193.7 Notice